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O.P.No.517 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

O.P.No.517 of 2019

Mr.Dillibabu,
Rep. by his Power Agent,
Mr.G.M.Dinesh Kumar,
No.1, NSN Garden,
Voltas Colony, Vasanth Apartment,
F2 Block 'C',
Nanganallur, Chennai - 600 061.

... Petitioner

VS.

1.Time Green,
A real Estate Firm,
Represented by its Partners
No.11, Samburnam Avenue,
Arcot Road,
Vadapalani,
Chennai 600 026.

2.Mr.B.Mathan

3.Mr.K.Naveen Kumar

... Respondents



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PRAYER: Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleaded to appoint an arbitrator to adjudicate on the disputes between the petitioner and the respondent.

For Petitioner : Mr.B.Leelesh Sundaram
for M/s.Nathan and Associates
For Respondents : No Appearance

ORDER

The petitioner seeks the constitution of an arbitral tribunal to adjudicate disputes between the petitioner and the respondent.

2. The petitioner states that the respondents availed of credit facilities from the petitioner under multiple loan agreements. A Memorandum of Understanding dated 14.07.2014 was entered into in relation to the repayment of amounts borrowed under the loan agreement. The petitioner cites clause (e) of the said Memorandum of Understanding, which is as under:



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"(e). In the event of any dispute or difference arising between the parties as to their respective rights or obligations in terms hereof or with regard to validity, interpretation, implementation or alleged breach of the terms of this agreement or incidental hereto including any dispute as to the existence or validity hereof, the parties shall attempt in the first instance to resolve such dispute through negotiation. If the dispute is not resolved through negotiation within 30 days after the commencement of such negotiation or such longer period as the parties may agree in writing, then such dispute or differences shall be referred to arbitration by a Sole Arbitrator agreed and appointed by the Lender to this dispute. The venue of the arbitration proceedings shall be Chennai, India and shall be governed by the rules of the Arbitration and Conciliation Act of 1996. The decision of the sole arbitrator shall be final and binding on all parties to this agreement. The language used in the arbitration shall be English."



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3. After a failed attempt at a negotiated settlement, the petitioner issued a notice dated 15.03.2019 under Section 21 of the Arbitration and Conciliation Act, 1996. Proof of receipt of the Section 21 notice has been placed on record. Since the respondents failed to reply to the said notice, the present petition was filed.

4. Upon notice being served on the respondents, the respondents entered appearance through counsel. However, learned counsel for the respondents failed to appear at the hearing on 22.11.2022. In order to provide a further opportunity to the respondents, the matter was adjourned to 30.11.2022. The Court recorded that orders would be passed on the said date. On 30.11.2022, the matter was adjourned once more until today. At the hearing today, there is no representation for the respondents. Therefore, the matter is proceeded with in the absence of the respondents.

5. As stated earlier, the Memorandum of Understanding dated 14.07.2014 is on record. The said agreement has been executed by and between the petitioner, on the one hand, and the second and third



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respondents herein, on the other. The second and third respondents are referred to therein as partners of Time Green-A Real Estate Firm. The agreement was, however, not executed on behalf of the said partnership firm. Therefore, the petitioner is not entitled to join the first respondent as a party.

6. Clause (e) of the Memorandum of Understanding provides for dispute resolution through arbitration. It requires an attempt at a negotiated settlement in the first instance. As proof of the endeavour to resolve the dispute through negotiation, the petitioner has placed on record the cheque issued by the respondents and proof that such cheque was dishonoured. The Section 21 notice, including proof of receipt thereof by the respondents in March / April 2019, is on record. In light of the above, the petitioner is entitled to succeed.

7. For reasons set out above, O.P.No.517 of 2019 is allowed by appointing Mr.K.M.Aasim Shehzad, Advocate, No.47/1, Rams Surabhi Apartments, 1st Main Road, R.A.Puram, Chennai - 600 028, as the sole



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arbitrator to adjudicate the dispute between the petitioner and respondents 2

and 3. The sole arbitrator is called upon to enter upon reference and adjudicate the dispute. The fees and expenses in respect of the arbitral proceedings shall be fixed by the arbitral tribunal in consultation with the parties.

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Index : Yes / No

Internet : Yes / No



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